

REFERENCE TITLE: law enforcement officers; interviews

State of Arizona  
Senate  
Forty-eighth Legislature  
Second Regular Session  
2008

## **SB 1060**

Introduced by  
Senator Waring

AN ACT

AMENDING SECTION 38-1101, ARIZONA REVISED STATUTES; RELATING TO LAW  
ENFORCEMENT OFFICER EMPLOYMENT INTERVIEWS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 38-1101, Arizona Revised Statutes, is amended to  
3 read:

4 38-1101. Law enforcement officers; probation officers; right to  
5 representation; right to evidence on appeal; change  
6 of hearing officer or administrative law judge;  
7 definitions

8 A. If an employer interviews a law enforcement officer or probation  
9 officer and the ~~employer~~ LAW ENFORCEMENT OFFICER OR PROBATION OFFICER  
10 reasonably believes that the interview could result in dismissal, demotion or  
11 suspension:

12 1. The law enforcement officer or probation officer may request to  
13 have a representative of the officer present at no cost to the employer  
14 during the interview. The law enforcement officer or probation officer shall  
15 select a representative who is available on reasonable notice so that the  
16 interview is not unreasonably delayed. The representative shall participate  
17 in the interview only as an observer. Unless agreed to by the employer, the  
18 representative shall be from the same agency and shall not be an  
19 attorney. The law enforcement officer or probation officer shall be  
20 permitted reasonable breaks of limited duration during any interview for  
21 telephonic or in person consultation with others, including an attorney, who  
22 are immediately available. An employer shall not discipline, retaliate  
23 against or threaten to retaliate against a law enforcement officer or  
24 probation officer for requesting that a representative be present or for  
25 acting as the representative of a law enforcement officer or probation  
26 officer pursuant to this paragraph.

27 2. Before the commencement of any interview described in this section,  
28 the employer shall provide the law enforcement officer or probation officer  
29 with a written notice informing the officer of the specific nature of the  
30 investigation, the officer's status in the investigation, all known  
31 allegations of misconduct that are the reason for the interview and the  
32 officer's right to have a representative present at the interview.

33 B. ~~Nothing in this subsection shall~~ SUBSECTION A DOES NOT require the  
34 employer to either:

35 1. Stop an interview to issue another notice for allegations based on  
36 information provided by the ~~employee~~ LAW ENFORCEMENT OFFICER OR PROBATION  
37 OFFICER during the interview.

38 2. ~~To~~ Disclose any fact to the ~~employee~~ LAW ENFORCEMENT OFFICER OR  
39 PROBATION OFFICER or ~~the employee's~~ THAT PERSON'S representative that would  
40 impede the investigation.

41 C. Subsection A does not apply to an interview of a law enforcement  
42 officer or probation officer that is:

43 1. In the normal course of duty, counseling or instruction or an  
44 informal verbal admonishment by, or other routine or unplanned contact with,  
45 a supervisor or any other law enforcement officer or probation officer.

1           2. Preliminary questioning to determine the scope of the allegations  
2 or if an investigation is necessary.

3           3. Conducted in the course of a criminal investigation.

4           4. Conducted in the course of a polygraph examination.

5           D. In any appeal of a disciplinary action by a law enforcement officer  
6 or probation officer, the parties shall exchange copies of all relevant  
7 documents and a list of all witnesses pursuant to the following time periods  
8 and requirements:

9           1. Within three business days after the employer's receipt of a  
10 written request from the law enforcement officer or probation officer for a  
11 copy of the investigative file that is accompanied by a copy of the filed  
12 notice of appeal, the employer shall provide a complete copy of the  
13 investigative file as well as the names and home or work mailing addresses of  
14 all persons interviewed during the course of the investigation.

15           2. No later than five business days before the appeal hearing, or, if  
16 the appeal hearing is scheduled more than twenty days after the notice of  
17 appeal, no later than ten business days before the appeal hearing, the  
18 employer and the law enforcement officer or probation officer shall exchange  
19 copies of any documents that may be introduced at the hearing and that have  
20 not previously been disclosed.

21           3. No later than five business days before the appeal hearing, or, if  
22 the appeal hearing is scheduled more than twenty days after the notice of  
23 appeal, no later than ten business days before the appeal hearing, the  
24 employer and the law enforcement officer or probation officer shall exchange  
25 the names of all witnesses who may be called to testify. A witness may be  
26 interviewed at the discretion of the witness. The parties shall not  
27 interfere with any decision of a witness regarding whether to be  
28 interviewed. An employer shall not discipline, retaliate against or threaten  
29 to retaliate against any witness for agreeing to be interviewed or for  
30 testifying or providing evidence in the appeal.

31           E. It is unlawful for a person to disseminate information that is  
32 disclosed pursuant to subsection D to any person other than the parties to  
33 the appeal and their lawful representatives for purposes of the appeal of the  
34 disciplinary action. This subsection does not prohibit the use of the  
35 information in the hearing or disclosure pursuant to title 39, chapter 1,  
36 article 2.

37           F. The employer or the law enforcement officer or probation officer  
38 may seek a determination by the hearing officer, administrative law judge or  
39 appeals board hearing the appeal regarding any evidence that the employer or  
40 the law enforcement officer or probation officer believes should not be  
41 disclosed pursuant to subsection D because the risk of harm involved in  
42 disclosure outweighs any usefulness of the disclosure in the hearing. In  
43 determining whether evidence will be disclosed, the hearing officer,  
44 administrative law judge or appeals board may perform an in camera review of  
45 the evidence and may disclose the material subject to any restriction on the

1 disclosure, including the closing of the hearing or the sealing of the  
2 records, that the hearing officer, administrative law judge or appeals board  
3 finds necessary under the circumstances.

4 G. In any appeal of a disciplinary action by a law enforcement officer  
5 or probation officer in which a single hearing officer or administrative law  
6 judge has been appointed to conduct the appeal hearing, the law enforcement  
7 officer or probation officer or the employer may request a change of hearing  
8 officer or administrative law judge. ~~In cases before the office of~~  
9 ~~administrative hearings,~~ On the first request of a party, the request shall  
10 be granted. ~~All other requests, including~~ Any subsequent ~~requests in cases~~  
11 ~~before the office of administrative hearings,~~ REQUEST may be granted only on  
12 a showing that a fair and impartial hearing cannot be obtained due to the  
13 prejudice of the assigned hearing officer or administrative law judge. The  
14 supervisor or supervising body of the hearing officer or administrative law  
15 judge shall decide whether a showing of prejudice has been made.

16 H. A party who violates subsection D or E, unless the violation is  
17 harmless, shall not be permitted to use that evidence at the hearing, except  
18 on a showing of good cause. The hearing officer or administrative law judge,  
19 on a showing of good cause, may grant the opposing party a continuance,  
20 otherwise limit the use of the evidence or make such other order as may be  
21 appropriate. ~~IF A LAW ENFORCEMENT OFFICER OR PROBATION OFFICER PROVES THAT~~  
22 ~~AN INTERVIEW WAS CONDUCTED IN VIOLATION OF SUBSECTION A, THE FACT OF THE~~  
23 ~~INTERVIEW AND ANY EVIDENCE OBTAINED DURING THE INTERVIEW IS NOT ADMISSIBLE IN~~  
24 ~~THE HEARING.~~

25 I. If the employer amends, modifies, rejects or reverses the decision  
26 of a hearing officer, administrative law judge or board, the employer shall  
27 state the employer's reasons for the amendment, modification, rejection or  
28 reversal.

29 J. This section does not preempt agreements that supplant, revise or  
30 otherwise alter the provisions of this section, including preexisting  
31 agreements between the employer and the law enforcement officer or probation  
32 officer or the law enforcement officer's or probation officer's lawful  
33 representative association.

34 K. For the purposes of this section:

35 1. "Appeal" means a hearing before a state or local merit board, a  
36 civil service board, an administrative law judge or a hearing officer.

37 2. "Disciplinary action" means the dismissal or demotion or the  
38 suspension for more than forty hours of a law enforcement officer or  
39 probation officer that is authorized by statute, charter or ordinance and  
40 that is subject to a hearing or other procedure by a local merit board, a  
41 civil service board, an administrative law judge or a hearing officer.

42 3. "Investigative file" means the law enforcement agency's complete  
43 report and any attachments detailing the incidents leading to the  
44 disciplinary action.

45 4. "Law enforcement officer" means:

1           (a) An individual, other than a probationary employee, who is  
2 certified by the Arizona peace officer standards and training board, other  
3 than a person employed by a multi-county water conservation district.

4           (b) A detention officer or correction officer who is employed by this  
5 state or a political subdivision of this state.

6           5. "Probation officer" means a probation officer or surveillance  
7 officer who is employed by this state or a political subdivision of this  
8 state.